

General Information Letter: Taxpayers may not claim a credit for taxes imposed by Kentucky directly on a partnership, Subchapter S corporation or other entity that is treated as a pass-through entity for Illinois income tax purposes.

April 29, 2008

Dear:

This is in response to your letter dated April 1, 2008. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.tax.illinois.gov.

In your letter you have stated the following:

I appreciate your assistance in looking into this matter for us. Pursuant to our request, I am enclosing the following information:

- 2006 Form IL-1040 for Ms. Z, SS# XXX-XX-XXXX
- 2006 Kentucky Form 740-NP for Ms. Z
- 2006 Kentucky Form 720S for Z Contracting Corporation, including Kentucky K-1 for Ms. Z
- Indiana Commissioner Directive #35 discussing Indiana's conclusion on this issue
- IL DOR LTR-402 dated March 6, 2008 from Ms. Y

I hope this information is sufficient for you to make your determination. The heart of the matter is that the \$431,924 of income from Z Contracting was previously taxed by Kentucky at the S corporation level for 2006. However, Ms. Z was still personally liable for her share of the Kentucky tax on Z Contracting's income and filed a nonresident Kentucky income tax return and claimed a credit in the amount of \$24,083 which represented her share of the Kentucky income tax on the S corporation's income which was paid at the S corporation level. Ms. Z was required to pay additional Kentucky income tax in the amount of \$615 on this income on her Kentucky nonresident return.

Response

Section 601(b)(3) of the Illinois Income Tax Act (35 ILCS 5/601) provides, in part:

The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year. (emphasis added)

The regulation interpreting this credit at 86 Ill. Adm. Code Section 100.2197(f) provides:

An Illinois resident individual who is a shareholder or partner claiming a foreign tax

credit for the shareholder's or partner's share of personal income taxes paid to a foreign state on his or her behalf by a Subchapter S corporation or a partnership, respectively, must attach to his or her Illinois return a written statement from the Subchapter S corporation or partnership containing the name and federal employee identification number of the Subchapter S corporation or partnership and clearly showing the paid amount of foreign tax attributable to the shareholder or partner, respectively. Additionally, the statement must include the shareholder's or partner's share of the Subchapter S corporation's or partnership's items of income, deduction and exclusion in sufficient detail to allow computation of the amount of base income subject to tax under subsection (b)(4) of this Section. Taxes imposed directly on the Subchapter S corporation or the partnership are not eligible for the credit. (emphasis added)

Pursuant to these provisions, Ms. Z is not entitled to a credit for the tax imposed by Kentucky on the Subchapter S corporation. The tax was imposed on the corporation, not on her, and it was not paid by her or by the corporation acting on her behalf.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax